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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,181	07/26/2001	Felix Theeuwes	DURE-023	9651

24353 7590 05/08/2003

BOZICEVIC, FIELD & FRANCIS LLP  
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MENLO PARK, CA 94025

EXAMINER
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LAM, ANN Y

ART UNIT	PAPER NUMBER
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1641

DATE MAILED: 05/08/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/917,181	THEEUWES ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Ann Y. Lam	3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,4,6-14,17-25 and 29-31 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4,6-14,17-25 and 29-31 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 6-14, 17-22, 29 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoon, 5,842,971.

Yoon discloses an elongate body (18) comprising a proximal end defining an inlet, and a distal end defining an outlet, the elongate body defining a passageway; and a diffuser element (22) operatively associated with the elongate body so as to define a diffusion space (i.e., space occupied by 20), wherein the diffusion space is in fluid communication with the elongate body passageway, see column 9, lines 34-42; wherein a drug at a first concentration is introduced into the elongate body inlet moves through the elongate body passageway, out the elongate body outlet, into the diffusion space, see column 9, lines 38-42, and further wherein fluid from the environment outside the device passes into the diffusion space through the diffuser element, wherein the fluid mixes with the drug, thereby diluting the drug to a second concentration within the diffusion space, and wherein said diluted drug then diffuses out through the diffuser element to exit the device, see column 9, lines 34-44.

As to claim 2, the diffuser element is the diffuser element comprising a material selected from the group consisting of a microporous membrane, see column 9, lines 42-44.

As to claim 4, the elongate body is defined by an exit orifice of a drug delivery device having a diffuser element provided as a cap (22) attached to the exit orifice (48).

As to claim 6, the diffusion space is defined by an outer wall of the elongate body (18) and an inner wall of the diffuser element (22).

As to claim 7, said diffuser element (22) envelops at least a portion of said elongate body (18), see Figure 2.

As to claim 8, the diffuser element is microporous, see column 9, lines 42-44.

As to claim 9, the diffuser element is a dense membrane, see column 9, lines 42-44.

As to claim 10, the diffuser element is an ion-exchange membrane, see column 9, lines 42-44.

As to claim 11, said diffuser element distal end extends distally beyond the elongate body distal end, see Figure 2.

As to claim 12, the diffuser element distal is ring-shaped element, see Figure 2.

As to claim 13, the diffuser element is substantially impermeable to components of biological fluids.

As to claim 14, the diffuser element is selectively permeable to water, see column 9, lines 38-40.

As to claim 17, the elongate body comprises at least two outlets (48).

As to claim 18, the elongate body defines at least two passageways (36A).

As to claims 19 and 24, the elongate body passageway is adapted for delivery of agent at a low volume rate, see column 9, lines 38-44.

As to claim 20, the device is attached to a drug delivery reservoir, see column 9, lines 40-41.

As to claims 21 and 22, the drug delivery device is a convective drug delivery device, and is implantable.

As to claim 25, the drug moves through the elongate body passageway, out the elongate body outlet, into the diffusion space, and further the water from the environment outside the device passes into the diffusion space through the diffuser element wherein the water mixes with the drug, thereby diluting the drug to a second concentration within the diffusion space, and the drug then diffuses out through the diffuser element to exit the device, see column 9, lines 34-44.

As to claim 29, the diffuser element comprises a polymeric film, see column 8, lines 28-33.

As to claim 31, the diffuser element is impermeable to drug and permeable to water, see column 9, lines 38-40.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the

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subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoon, 5,842,971.

Yoon discloses the invention substantially as claimed, except for the diffuser element having a Diffusion Coefficient value in the range between  $4.1 \times 10^{-6}$  and  $3.3 \times 10^{-5}$  ug/cm/sec. However, it would have been obvious to form the diffuser element as described above to have the specific Diffusion Coefficient as claimed, since it would have been obvious to form the diffuser element in a given size or to form the holes in a different size as necessary to accommodate a particular patient or particular medical procedure, see column 33, lines 42-46.

### ***Response to Arguments***

Applicant's arguments with respect to the above rejected claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

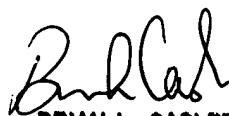
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Y. Lam whose telephone number is (703) 306-5560. The examiner can normally be reached on T-F 8-6:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (703)308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

A.L.  
May 1, 2003

  
BRIAN L. CASLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700